IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 25TH OCTOBER 2007 / 3RD KARTHIKA 1929

Crl.Rev.Pet.No. 3589 of 2007()

CRA.408/2005 of ADDL.SESSIONS JUDGE, ADHOC-I, MANJERI
CC.96/2003 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, PERINTHALMANNA

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REVN. PETITIONER: APPELLANT/ACCUSED 1 & 3

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1. ABDUL SAMAD,S/O. KOYAKUTTY HAJI,
THONIKKARA HOUSE, THACHINGANADAM PO,
MALAPPURAM DISTRICT.

2. KASIM.S/O. KOYAKUTTY
THONIKKARA HOUSE, THACHINGANADAM PO,
MALAPPURAM DISTRICT.

BY ADV. SRI.K.M.SATHYANATHA MENON
SMT.S.SMITHA (PARAKKAL)

RESPONDENTS: COMPLAINANT

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 25/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 3589 OF 2007 C

Dated this the 25th day of October, 2007

O R D E R

The revision petitioners, who are accused Nos.1 and 3 in C.C.No.96/2003 on the file of JFCM-II, Perintalmanna for offences punishable under sections 323 and 324 read with section 34 IPC, challenge the conviction entered concurrently by the courts below and the sentence of fine imposed by the lower appellate court in modification of the sentence of imprisonment awarded by the trial court.

2. The case of the prosecution can be summarised as follows:-

On 7.2.2003 at about 7.30 a.m. from the road in front of the mosque at Areekandampak in Nemini amsom and desom, accused Nos.1 to 3 in furtherance of their common intention to voluntarily cause hurt to PW1, the de facto complainant, beat him with bare hands and also with a firewood causing injuries.

3. Since the 2nd accused is absconding, the revision petitioners alone faced trial. On the side of the prosecution, 6 witnesses were examined as PWs 1 to 6 of whom PW1 is the

injured de facto complainant and PW2 is his brother who is an eye witness to the occurrence. The prosecution got marked 5 documents as Exts.P1 to P5 and a firewood as material object MO1.

4. After the close of the prosecution evidence, the accused were questioned under section 313(1)(b) Cr.P.C. They denied the incriminating circumstances put to them and maintained their innocence. They examined one witness as DW1.

5. The learned Magistrate after trial, as per judgment dated 15.10.2005 convicted both the revision petitioners of the offences punishable under sections 323 and 324 IPC and sentenced each of them to simple imprisonment for three months and to rigorous imprisonment for six months respectively with a direction that the sentences shall run concurrently.

6. The revision petitioners preferred an appeal before the Sessions Court, Manjeri as Crl.Appeal No.408/2005. As per judgment dated 20.7.2007 the Additional Sessions Judge, Adhoc-I, Manjeri confirmed the conviction recorded against the revision petitioners but modified the sentence to fine of Rs.1,000/- each and Rs.2,000/- each for the conviction under sections 323 and 324

IPC respectively. It is the said judgment which is assailed in this revision.

7. Eventhough the learned counsel appearing for the revision petitioners challenged the conviction recorded by the courts below on various grounds including one that PW2, who is none other than the brother of the de facto complainant, was a related and, therefore, interested witness, I do not think that that, by itself, is a ground to discard his testimony. The trial court which had the unique advantage of seeing the witnesses and assessing their credibility has chosen to believe PWs 1 and 2. The lower appellate court has also accepted their testimony. In the absence of any infirmity in the appreciation of the evidence by the courts below, this court sitting in revision will be loathe to interfere with the conviction recorded and the conviction is accordingly confirmed.

8. What now survives for consideration is the question of adequacy or otherwise of the sentence imposed on the revision petitioners. The lower appellate court has been indulgent enough to let them off with a sentence of fine only. If at all the lower appellate court has erred, that was on the side of leniency in not

imposing a sentence of imprisonment. I do not find any good reason to interfere with the sentence of fine. The direction to pay the fine amount as compensation also does not call for interference.

In the result, this revision fails and is accordingly dismissed.

(V. RAMKUMAR, JUDGE)

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